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ABSTRACT

A discussion guide, one in a series on constitutional reform issues developed by The Jefferson Foundation as part of the Jefferson Meeting on the Constitution project, examines proposals to change congressional terms. The first section discusses representation and the sovereignty of the people through the issues of actual and virtual representation. The second section investigates terms of office and safeguarding liberties through the issues of the 2-year term, limits on tenure, and the nature of the legislator. The third section examines congressional tenure and legislative demands in the 20th century and lists arguments for and against lengthening terms in the House of Representatives and arguments for and against limiting congressional tenure. Congressional reform and other approaches since 1946 are examined. The document concludes with excerpts from congressional testimony on the 4-year term and a brief legislative history of congressional tenure. (RSL)

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# "THE ROOT OF REPUBLICAN GOVERNMENT"

## Terms of Office in the Legislative Branch

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A Guide for Discussion of Proposals to Change Congressional Terms

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"Article—

**No person who has been elected to the Senate ___ times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives ___ times shall be eligible for election to the House of Representatives."**

"Article—

**The term of office for Members of the House of Representatives shall be four years."**

"Where annual elections end tyranny begins . . ." was the rallying cry for many an Anti-Federalist during the Constitutional ratification debate. The proposed length of terms in Congress were high on the grievance list of the Anti-Federalists, who suspected they would create a centralized power removed from the people. The right to have fair representation was what the new nation had fought the Revolution for. Elections were *the* link between the people and the government; they embodied the very principle of government by and for the people. Debates over term length were therefore prolonged and impassioned at the Constitutional Convention. The debate is still alive today.

Annual elections rarely get serious mention today, but proposals to reform the system to lengthen or limit congressional terms have been introduced in almost every Congress since 1869. While most have suggested 4-year House terms, three and six years have been proposed as well. Amendments to limit tenure in the Senate and House generally set from 12–24 years as the maximum. In recent years amendments combining the two changes have been introduced.

The persistence of these proposals shows just how vigilant Americans are when it comes to making the representative system work. In the concept of representative government lies the American commitment to popular sovereignty and one of the founders' major achievements. As James Madison said after the new Constitution had been ratified and amended with the Bill of Rights:

> *A government deriving its energy from the will of the society . . .* on the understanding and interest of the society *. . . is the government for which philosophy has been searching, and humanity been fighting, from the most remote ages. Such are republican governments which it is the glory of America to have invented, and her unrivalled happiness to possess.* (National Gazette, February 20, 1792)

By their constant attention to the effectiveness of their representative institutions, Americans express the desire to safeguard this possession, as they have fought to safeguard their natural rights and freedoms for over 200 years.

## REPRESENTATION AND THE SOVEREIGNTY OF THE PEOPLE

### Confidence and Safety

Underlying the creation of the republican system was the question the founders had seen over and over again in the annals of societies since classical civilization. That is the question of why we have government at all; what it is in human nature that requires governing or, more positively, enables people to govern. The founders had enough faith in human nature to believe people capable of governing themselves. For "Publius," writing in the Federalist Papers in praise of the proposed Constitution, this meant that republican government was founded in confidence.

> *As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form.* (Federalist #55)

But even an advocate of popular sovereignty as wholehearted as Thomas Jefferson was aware of the need to temper confidence in human nature with limits on the powers entrusted to government officials.

> *. . . It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism—free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power . . .* (Kentucky Resolutions, 1798)

In the 18th-century debate, optimism about the ability of the people to form their own government never left an awareness of human corruptibility far behind. The founders knew that power could corrupt, and that freedom would be its victim. Thus while the people could be trusted to choose the government, they would need to protect their liberties by institutional "checks" on power.

### Actual and Virtual Representation

The founders were not the first to grapple with the question of popular sovereignty or representation. The ancient republics, the philosophic writings of Plato, Aristotle and more recently of John Locke and Montesquieu, and their own British constitutional heritage gave them guidance. But some aspects of their task were truly experimental: the idea of a written Constitution

and the "scheme of representation" among them. As Publius noted

> *The scheme of representation, as a substitute for a meeting of the citizens in person, being at most but very imperfectly known to ancient polity; it is in more modern times only, that we are to expect instructive examples.* (Federalist #52)

The founders did have some "instructive examples" in the representative governments that were set up in each of the original 13 states. But their examples, and 18th-century republican theory both pointed to the same maxim: the republican system was meant to govern a small geographic area. A large centralized government would be too distant to be truly representative. Despotism would inevitably result. As Governor of New York George Clinton wrote, under the name of "Cato,"

> *It is natural, says Montesquieu, to a republic to have only a small territory, otherwise it cannot long subsist: in a large one, there are men of large fortunes, and consequently of less moderation; there are too great deposits to trust in the hands of a single subject; an ambitious person soon becomes sensible that he may be happy, great and glorious by oppressing his fellow citizens, and he might raise himself to grandeur, on the ruins of his country. In large republics, the public good is sacrificed to a thousand views; in a small one, the interest of the public is easily perceived, better understood, and more within the reach of every citizen ...*

The founders were thus taking a chance when they created a republican system to govern a large and diverse geographical area. They drew upon two kinds of representation they had experienced as British colonists: "actual" representation, in the local legislatures and "virtual" representation in the British House of Commons.

In the British representative tradition, the House of Commons was a legitimate sovereign body because it "virtually" represented the people. This idea holds that there is one single homogenous interest common to all the people and that the role of the representative is to discern and legislate based on that interest. "Actual" representation, on the other hand, meant that the representative body mirrored the population in all its diversity and acted according to the particular wishes of its constituents. Elected delegates were the instruments of the people. There was a premium on accessibility, local ties and physical proximity to constituents. Power would always be close to the people.

The question of whether a representative should legislate in what he thought to be the "best interest" of the people or whether he should act only according to their specific instructions had profound implications for the legislative branch. It was not finally decided by the Convention, which instead structured

the legislature with elements of both.

> *The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.*
>
> *No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years an inhabitant of that state in which he shall be chosen.* (Article 1, Section 2)

Electing representatives by district, residence requirements and obtaining the consent of the electorate are part of the "actual" representation tradition. But federal legislators do not consult the people on every issue because the people give them the power to "virtually" represent their interests. The trust in elected officials necessary to make this federal system work made some more uneasy than others.

**A Question of Arithmetic?**
**The Two Extremes:**
**Government by the Many/Government by One**

It is not surprising that the founders were watchful of anything that threatened a return to monarchy. Anti-Federalist Patrick Henry saw the danger of monarchy in the shift of power from the states to the federal government. But they were equally fearful of the threat from "below": too much democracy would degenerate into government by the mob, or no government at all, as Publius argued in Federalist #55.

> *HENRY: The Constitution reflects in the most degrading and mortifying manner on the virtue, integrity, and wisdom of the state legislatures; it presupposes that the chosen few who go to Congress will have more upright hearts, and more enlightened minds than those who are members of the individual legislatures. To suppose that ten gentlemen shall have more real, substantial merit than one hundred-seventy, is humiliating to the last degree. If ten men be better than one hundred-seventy, it follows of necessity that one is better than ten* . . . (Virginia ratifying debates)

> *PUBLIUS: Nothing can be more fallacious than to found our political calculations on arithmetical principles. Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionately a better depository. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is, that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limitation in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies,*

*of whatever characters composed, passion never failed to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.* (Federalist #55)

## TERMS OF OFFICE AND SAFEGUARDING LIBERTIES

### The Two-Year Term

> *As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration (the House) should have an immediate dependence on and intimate sympathy with the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. But what particular degree of frequency may be absolutely necessary for the purpose does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected. Let us consult experience, the guide that ought always be followed whenever it can be found.* (Federalist #53)

Under the Articles of Confederation, delegates to the Congress were appointed by the state legislatures. Their terms varied from state to state, ranging from six months in Connecticut and Rhode Island to two years in South Carolina, with the others adhering to the tradition of annual elections. For Publius, frequent elections were important, but annual elections would cause disruption. Biennial elections were both "necessary and useful" because of the greater amount of knowledge required of federal legislators and the distance they were to travel between their homes and the seat of government.

At the Constitutional Convention, the two-year term emerged as a compromise between annual elections and a proposal for triennial elections supported by James Madison and adopted by the Committee of the Whole until final deliberations on the subject, when Edmund Randolph and George Mason were instrumental in amending the provision to two years. Although the Committee recommended the change unanimously, the term length question continued to be one of great controversy throughout the ratification process. The failure to include annual elections was enough to prevent Elbridge Gerry from signing the Constitution.

> *. . . When society has thus deputed a certain number of their equals to take care of their personal rights, and the interest of the whole community, it must be considered that responsibility is the great security of integrity and honor; and that annual election is the basis of responsibility,—man is not immediately corrupted, but power without limitation,*

*or amenability, may endanger the brightest virtue—whereas a frequent return to the bar of their constituents is the strongest check against the corruption to which men are liable, either from the intrigues of others of more subtle genius, or the propensities of their own hearts . . .*

For Gerry, as for many Anti-Federalists, the abstract principle of popular sovereignty over government was not enough: more practical safeguards were needed to protect liberty.

**The "Federal City"**

The House of Representatives was not the only body that spurred debate over term length. The presidential term caused considerable disagreement and the length of senatorial terms caused proponents of states' rights in particular to dissent. Even though Senators until 1913 were elected by the state legislatures, what Anti-Federalist writer "Brutus" said about them in 1788 is relevant to the question of terms in general.

*(Senators) should not be so long in office as to be likely to forget the hand that formed them, or be insensible of their interests. Men long in office are very apt to feel themselves independent; to form and pursue interests separate from those who appointed them. And this is more likely to be the case with the Senate, as they will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middling class of people. For it is to be remembered that there is to be a federal city, and the inhabitants of it will be the great and mighty of the earth. For these reasons I would shorten the term of their service to 4 years. Six years is a long period for a man to be absent from his home, it would have a tendency to wean him from his constituents.* (NY Journal, April 10, 1788)

## Limits on Tenure

The Constitution departed from the Articles of Confederation again by putting no limitation on the number of terms members of Congress could serve. This provision, based on the principle known as "rotation in office," was a check on the accrued power of veteran legislators. Under the Articles delegates were restricted to serving only three out of each six consecutive years. Publius appealed to the principles of the new system to show that rotation or other limitations were unnecessary: the biggest check on power was the Constitution itself, under which no legislator had more power than any other citizen. Beyond that, there was the more practical consideration of the need for experienced legislators and the dangers of too many freshman congressmen.

*A few of the members, as happens in all such assemblies, will possess superior talents, will, by frequent reelections, become members of long standing, will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members, and the less the information of the bulk of the members, the more apt they will be to fall into the snares that may be laid for them. This remark is no less applicable to the relations which will subsist between the House of Representatives and the Senate.* (Federalist #53)

But in the lack of rotation, Elbridge Gerry found another reason to dissent from the proposed Constitution, a reason that outweighed the practical consideration of experience.

*There is no provision for a rotation, nor anything to prevent the perpetuity of office in the same hands for life; which by a little well-timed bribery, will probably be done, to the exclusion of men of the best abilities from their share in the offices of government. By this neglect we lose the advantage of that check to the overbearing insolence of office, which by rendering him ineligible at certain periods, keeps the mind of man in equilibrium, and teaches him the feelings of the governed, and better qualifies him to govern in his turn.*

**The Nature of the Legislator**

Time and again, in arguing over the institutional provisions of representative government, the founders returned to the fundamental question of what kind of person made the ideal legislator in a republic. Disagree as they might over the amount of control necessary to prevent tyranny, they did agree that in a republic based on the sovereignty of the people, the most appropriate legislator would be a citizen first. The ideal "citizen legislator" was both well-read in classical republican theory and experienced in the "real world" of his constituents. The legislature was not a career but a tour of duty, not a life in itself but part of a life of varied interests and occupations. Some of the year would be devoted to the congressional session and the public good, the rest to private activities.

In the citizen legislator, the founders believed they had found the ideal that could balance the demands of knowledge, legislative experience and efficiency with those of democracy, accountability and the need to check the accumulation of power. The tension between those demands is one that has lasted, and part of the impulse to reform Congress is an attempt to retain the 18th-century balance in the context of the 20th century. Some of the same questions faced by the founders as they struggled to implement their ideals have resurfaced as modern Americans contemplate the need for change in the legislative branch.

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## QUESTIONS TO GUIDE DISCUSSION

- Is representative government founded in "confidence" in the people, as Madison said, or in "jealousy"—the need to protect individual rights from the encroachments of those in power? How do these attitudes affect our representative institutions?
- How do we justify our system of representation? Does our system give us "actual" representation—a mirror of what the people want—or "virtual" representation—government in the name of the "national interest"? Would changes in government make ours a more representative system?
- Is the ideal of the "citizen legislator" alive today? Can it work in the modern Congress or do we need to revise our ideal to take modern realities into account?
- Would a longer House term allow Congressmen to do a better job? Would there be a loss of accountability? If so, how would that affect performance? Are the demands on a Congressman's time more pressing today than in the 18th century?
- Would a limit on congressional terms take away the people's right to choose? Would it deprive them of other benefits they are entitled to?

- Have the founders' fears of the corrupting influence of power, the vulnerability of inexperienced legislators to the "intrigues of others" and the seduction threatened by the "federal city" proven justified? How important should a suspicion of human nature be in determining the form government takes today?

## CONGRESSIONAL TENURE TODAY

### Legislative Demands in the 20th Century

> *No man can be a competent legislator who does not add to an upright intention and sound judgment a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lies within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it. The period of service ought, therefore, in all such cases, to bear some proportion to the extent of practical knowledge requisite to the due performance of the service.* (Federalist #53)

In Publius' opinion, the length of a Congressman's term should be directly related to the amount of knowledge he needs to be an effective official of "the great theatre of the United States." When the Federalist Papers were written that knowledge consisted of: the commercial and legal affairs of all the states, the "internal circumstances by which the states are distinguished from each other," and treaties and laws of other nations. The modern argument for a three or four-year House term is similar, but today advocates of a longer term point out that legislators must master a much larger body of knowledge than their 18th-century counterparts. Now, they claim, we must add to the list: the regulations of a bureaucratic federal government with an expanded role in the lives of its constituents; the trends of a more complex scientific and technological society; the foreign affairs of a major world power, among others.

> *There was little magic in the number two, even in the year of its adoption. I am convinced that the question of tenure should be reexamined in light of our needs in the 20th century.*

When President Lyndon Johnson made this comment during an address to Congress in 1966 he reopened an issue which had been around for almost 100 years and revived a debate that originated in the Constitutional Convention: do short terms contribute to the "best interests of democracy" or to "harassed inefficiency and the loss of invaluable experience"? Applied to the realities of a 20th-century Congress, these questions took on new meaning. Change in the congressional work load is clearly illustrated in statistics: the first Congress had 144 bills introduced and passed 108 laws; the 97th Congress passed 389 laws out of 10,582 bills introduced. But what to some may seem an obvious case for "modernization" is not so simple to others. The fact that the legislative demands on the first Congress included the "inauguration of the government and the primeval formation of a federal code" should not be overlooked. Nor did the first Congress have the benefit of "past transactions of the government"

as a "ready and accurate source of information to new members." It is questionable whether dealing with the huge and complex government of today can even come close to the initial challenge faced by our first legislators.

**Power Within Government**

Two controversial details of the 4-year proposal illustrate why other parts of the government would be concerned about the effect of a change in the House term.

1. Should Congressmen all run in the presidential election year or should elections be staggered as they are in the Senate? President Johnson proposed that congressional and presidential elections coincide and was accused of trying to subordinate the House to the President by tying its members to his "coattails." Johnson responded:

> *If our purpose is to serve the democratic ideal by making the people's House more effective in its performance of the people's business, then we must require that its members be chosen by the largest electorate our democracy can produce. That, assuredly, is the electorate called into being during a presidential year.*

2. Should the proposed amendment require House members to resign their seats if they intend to run for the Senate? Members of the Senate fear a strong challenge from incumbent Representatives if they can campaign for Senate seats in the midst of a four-year term. In hearings on the amendment in 1966 and again in 1979, it became clear that a four-year term proposal had no hope of passing the Senate without a clause requiring resignation.

## From Length to Limitation

Another tenure reform has been attracting more attention in recent Congresses than the call for lengthening terms. There is a growing attempt to revive the ideal of the "citizen legislator" by imposing a limit on congressional tenure. While supporters of limitation do believe it would lessen the constant reelection pressure that preoccupies members today, their major goal is to get Congress out of Washington and back among the people. Says Senator John Danforth, one of the reform's strongest advocates:

> *... By limiting terms, I hope to change the course of thinking of the people who come to Washington to serve in Congress. The purpose of my proposal is to make certain that each and every Congressman understands that his tenure here is limited, that—however adept a politician he may be, and however skillful he may be in pleasing special interest groups—he will someday have to answer to as well as for the laws he writes. By limiting terms we will remind each*

*Member of Congress that he is not, by virtue of his election, a member of some ruling class, but a citizen on leave to his government—a public servant first, last, and foremost.* (Testimony, March 14, 1978).

In Congress, up until the mid-19th century, the tradition was to serve for two terms and then retire; public service was a "sabbatical" in the midst of a private career. By the 1920's, the average stay had doubled, the number of committees had grown, and the seniority system was firmly entrenched: serving in Congress had become a career in itself. To some, this meant a more removed and less responsive body. But to others who oppose the concept of limitation, professionalism is not a bad development and the "citizen legislator" may not be equipped to do the job today. Columnist George F. Will wrote:

*Americans cling to the idea that government in a modern state can be an amateur's avocation. But in government, as in other serious enterprises, knowledge is cumulative. Government is as much a profession as law or teaching; it is a learned activity and an increasingly complicated one.*

*Politics in our time has been ennobled by the long careers of such Senators as John Stennis, Hubert Humphrey, and Henry Jackson. Granted, long service is only a necessary, not a sufficient, condition of legislative greatness. Granted, greatness is rare, even among those who have long careers. But it should not be made impossible.* (Washington Post, October 30, 1977)

A growing dissatisfaction with the behavior of Congress has inspired both potitical scientists and the general public to look at term limitation as a reform that might make a difference. Junior members of Congress continue to be frustrated by the seniority system which they claim is as firmly entrenched and as obstructive of efficient, fair legislation as ever.

*Contrary to popular belief—as fostered in the media—the so-called Watergate class of 1974, of which I am a member, did not destroy the seniority system in the House. Seniority, as we all know, is alive and well, along with its attendant fiefdoms, dominance over legislative priorities, and control of staff and funding in committees. One Senator or one Representative can tie up legislation for months—can, in fact, singlehandedly kill proposals which a majority of his or her committee may favor. A limit on terms would help restrict certain abuses in the committee process.* (Rep. Toby Moffett, Testimony, March, 14, 1978).

Finally, a major source of support for term limitation comes from internal scrutiny. Members themselves make some of the strongest arguments for limiting themselves. Incumbents are preoccupied with reelection throughout their careers; they never get off the "reelection treadmill." The privileges of being in Congress are constantly abused and the power and perquisites

surrounding them in their Washington lives insulate them from the "real world" and seduce them into perpetuating themselves in office indefinitely. In sum, they have seen the future that was predicted by the Anti-Federalist writer Brutus in his criticism of the Senate.

> *... It is probable that Senators once chosen for a state will, as the system now stands, continue in office for life. The office will be honorable if not lucrative. The persons who occupy it will probably wish to continue in it, and therefore use all their influence and that of their friends to continue in office. Their friends will be numerous and powerful, for they will have it in their power to confer great favors; besides it will before long be considered as disgraceful not to be reelected. It will therefore be considered as a matter of delicacy to the character of the senator not to return him again. Everybody acquainted with public affairs knows how difficult it is to remove from office a person who has long been in it ...* (New York Journal, April 10, 1788)

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## ARGUMENTS FOR LENGTHENING TERMS IN THE HOUSE

- A longer term would give Representatives more time to develop expertise and sound political judgment. They could devote more time to the issues rather than to running for reelection almost as soon as they start a new term.
- Longer legislative sessions and more responsibility call for adjustment in the system to reflect the fact that being a Representative is a full-time job.
- Longer terms would make congressional service more attractive to better quality candidates.
- The need to run less often would lower campaign costs and open the office to more people.
- Longer terms would decrease the number of bills introduced purely for reelection purposes.
- With modern communications and travel, a Representative can keep in touch with constituents more steadily. The 2-year term is not necessary to keep them in touch with constituents.
- A 4-year term coincident with the presidential term would strengthen the ties between the branches, and representatives would be elected in years when voter turnout is highest.
- A 4-year term with staggered elections would preserve the "mid-term" election while gaining the benefits of giving Representatives more time to legislate.
- With a longer term and less constant reelection pressure, Representatives would not have to rely so heavily on larger and larger staffs.
- Lengthening the federal term would follow the trend set by the states, where it has worked for better government without a loss of responsiveness.

## ARGUMENTS AGAINST LENGTHENING TERMS IN THE HOUSE

- Extending terms would remove the "mid-term" election, which is an opportunity for voters to have a say on the performance of the President.
- Reelection every two years keeps Congress in touch with the people and ensures that the House will reflect the changing or unchanging mood of the country. Longer terms will create too much inflexibility.
- Extending terms would not decrease the amount spent on campaigns, only increase the amount spent per campaign.
- Modern communications and travel can be used to lessen the burden of frequent campaigning; they make it easier to do the job in two years.
- Technology is not an adequate replacement for the election process in keeping Congressmen truly in touch with constituents.
- The last thing people need today is fewer opportunities to vote. Lengthening terms will only widen the gap between government and the people.
- A 4-year term coincident with the President's would create a permanent "coattail effect": candidates would be too dependent on what happened in the presidential campaign and not attentive to the local needs of constituents. More emphasis on the President can only weaken the legislative branch.
- A 4-year term with staggered elections would be unfair to the Congressmen who were always running in an "off" year.
- Congress can be more efficient if it passes internal reforms. The people should not be made to suffer because of Representatives' inability to work within the constraints set by the Constitution.

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## ARGUMENTS FOR LIMITING CONGRESSIONAL TENURE

- Limiting terms would create a constant influx of new blood and fresh ideas from the citizenry. Congress would be more responsive to what is foremost on the public agenda.
- The advantages of incumbency and seniority would be reduced and merit would play a larger role in determining who has power in Congress.
- The lack of limits on service is a Congressman's incentive to perpetuate himself in office and in Washington indefinitely, where members become insulated from what is important to constituents.
- Members might look more closely at legislation they know they will have to live with at the close of a limited tenure.
- Limiting terms would open the job to more people, especially the young or older people who would undertake it as a public service during or after another lifelong career. The reform would revive the "citizen legislator" and eliminate "careerism."
- Limitations on tenure would reduce the constant preoccupation with reelection and encourage more serious attention to issues aside from their reelection implications.
- Limitation would help alleviate the cynicism people feel toward government by making Congress more genuinely a branch made up of people like themselves.
- Congressional limitation extends the principle of the 22nd amendment (limiting Presidents to two terms in office) to the legislative branch.

## ARGUMENTS AGAINST LIMITING CONGRESSIONAL TENURE

- Congress and the people would lose the valuable expertise of experienced members who become better able to serve as they are there longer.
- The decision about how long is long enough should be left up to the voters, who are the best judges of whether their interests are being served.
- Internal reforms of the seniority system have vastly reduced the advantages of long tenure and made committee positions more open to newer members.
- Limiting terms would reduce the power of the legislative branch vis á vis the executive, and create "lame duck" Representatives and Senators for longer periods in larger numbers.
- It is undemocratic in any way to limit the right of voters to continue electing an effective official—whether the President, Senators, or Representatives.
- Limited terms would increase the number of "amateurs" in Congress and weaken it drastically in the face of the permanent Washington bureaucracy. We need more competent professional legislators.
- The voters themselves are already likely to turn out a legislator who has genuinely overstayed his welcome.
- Reelection pressure is generally a positive and necessary component of our system which should not be eliminated. Reforming the campaign process would be a more appropriate way of alleviating the problems that reelection can pose.

## CONGRESSIONAL REFORM—OTHER APPROACHES

Modern attempts to change congressional terms are not only a response to growth and change but are also a part of a larger reform context in the past 50 years. The 1946 Legislative Reorganization Act was perhaps the most significant attempt to make Congress more efficient. Its internal reforms significantly reduced the number of committees, established clear committee jurisdiction and initiated the congressional staff. More recent procedural reforms during the 1970's were also meant to strengthen the legislative branch from the inside. In the reform impetus created by the Watergate investigations, Congress took steps to open up the system by reducing the powers of committee chairmen and restricting the number of meetings that could be closed to the public. In an attempt to add more cohesion to the Congress, the tools of party discipline were enhanced.

One charge levied by opponents of changes in congressional terms is that the amendments are "solutions in search of a problem." While not denying the existence of problems, these opponents are skeptical of structural changes where internal solutions may be more to the point.

On the other hand, there are critics who say that term changes are not enough: problems in Congress are only a part of more general problems in the structure of government, and there are ways of integrating the electoral process into a broader reform approach. For example:

- Term lengths and the electoral process could be coordinated to promote a more unified and effective national government. Thus the presidential term could be lengthened to six years to match that in the Senate, and the House term would be lengthened to three years. With this arrangement, the way would be open to link congressional and presidential candidates on a single ticket so that voters would be electing officials pledged to work together from the outset. A similar arrangement could be effected with presidential and House terms at four years and the Senate at eight.
- Even though the regularity of elections may seem built in to the American political tradition, some argue that "special elections" powers could significantly improve the system by placing the strongest tools of accountability in the executive and legislative branches. Briefly, the special elections power would allow Congress to pass a vote of "no confidence" in the President and then put the question to the people by calling a special election in which it nominated an opposition candidate. The President could initiate a similar process by dissolving the Congress.

Those who look to non-structural reforms to solve some of the problems diagnosed by Congress watchers bring up the following:

- Overcome the perpetual reelection preoccupation by passing laws restricting the length of the campaign season and coming up with a system of public financing for congressional elections that would ease the burden of fundraising and make the system more equitable.
- Within Congress, pass regulations to lessen the power of incumbency and institute more stringent oversight of the use of mail and travel privileges that tip the balance toward the incumbent. Exercise sanctions to eliminate absenteeism.
- Prevent individual abuses of the system by strengthening party ties, the role of caucuses, and the emphasis on cooperation. A well-disciplined party machinery could help to ease the campaign burden on individual Congressmen and make the committee system work in a more open and equitable way.

## EXCERPTS FROM CONGRESSIONAL TESTIMONY

### On the Four-Year Term

*. . . it is easy to examine the attendance record in the second year of every session, the absenteeism created and resulting from the necessity of members to return to their districts for primary elections and for elections—which deprives the people of the productive capacity of the quality of men that they elected to serve them. And this is unfair. This retards the progress of our great American democracy, because we should not have one productive year out of every two for the issuance of progressive legislation, for the welfare of the great mass of our people.* (Rep. Tenzer, Testimony, July 13, 1966)

*Campaigns are at the center of politics. In a democracy, campaigning is a two-way process: it stimulates and educates the public, and it also stimulates public officials and is an important way for them to learn the views of the people. Campaigning is not a necessary evil, or necessarily a heavy burden that interferes with work of an elected official. It is an important part of his service. What we should aim for is to improve the means for campaigning.* (Eugene McCarthy, Testimony, July 14, 1966)

*I believe that a four-year term would give a Member of Congress a more secure feeling which, in turn, would give him a freedom which he must have in order to devote himself, heart and soul, to his legislative duties. I do not mean to imply that concern for political success and devotion to legislative duty are necessarily contradictory. They may or may not be. The motivation involved in one is likely to be different from that involved in the other. Elected representatives are not meant to enjoy absolute political security. That would contradict the meaning and efficacy of representative government. But the relative political insecurity and apprehension engendered by too-frequent elections are obstacles, I maintain, to wholehearted devotion to public business . . . It is my conviction that both the future role of Congress in national affairs and the fundamental interests of constituents would be enhanced by the four-year term for Representatives.* (Rep. D.R. Matthews, Testimony, July 1966)

*I believe these proposals reflect a belief that somehow the electoral process and the political process get in the way of rational decision-making in the public interest. There is a fear, a distrust of elections and politics. I believe, on the contrary, that our whole democratic system is predicated on frequent elections and lots of politics. That is how we resolve conflicts and reach compromises. I think it is a healthy part of the system.* (Thomas Mann, Director of APSA, Testimony, July 1979)

*. . . we have grown, we certainly have come of age . . . And to tell you the truth, there is absolutely no comparison—even at the*

*time I came here 22 years ago and today. My district has grown from 273,000 to where I represent over 600,000 people . . . And yet I have to service those people. And at the end of the day, there are just so many phone calls, so many letters, and so many people that old Frank can see. There are just so many bricks that a bricklayer can lay, there are so many teeth that a dentist can fill, there are so many patients that a doctor can see. So it is with a member of the House of Representatives. There is a limit to what a man can do, unless he starts delegating it, and who wants to delegate the peoples representation . . .* (Rep. Frank Chelf, Testimony, July 13, 1966)

*If . . . Representatives feel the Constitution places upon them an undue burden, I can only answer that they are under no obligation to run. Congress was not created for the benefit of Congressmen but rather for the people they represent. Neither, I might add, was Congress created for the benefit of the office of the President.* (Sen. Sam Ervin, Testimony, July 13, 1966)

*For we do not live in a day when news of Congressional action requires weeks to reach our constituents, nor when public opinion is obscured by time and distance. Communications media rush the news to every home and shop within minutes of its occurence. Public opinion polls, and mountains of mail, leave little doubt about what our people think of the issues most vital to them. I do not fear deafness on the part of those who will take their seats in Congress for a four-year term.* (Pres. Lyndon Johnson, special message to Congress, January 20, 1966)

*Public opinion polls and mail are insufficient substitutes for the electoral process. Under the parliamentary system, if the government is challenged on a serious national issue, and it is unable to carry the House, the House is dissolved and elections held. Our comparable institution is the biennial election.* (Sen. Eugene McCarthy, July 14, 1966)

*The reasons for the two-year term are as valid today as they were in 1789. Indeed, today, when travel between home and Washington is much less time consuming, and when ease of communications allows us to be informed immediately and accurately on any problems anywhere in the world, a short term is less of a burden than ever before.* (Sen. Sam Ervin, Testimony July 13, 1966)

**On Term Limitation**

*This amendment . . . would . . . open the process of government service to men and women of all ages, at any stage in their lives . . . and it would do that without in any way jeopardizing their state's relative position with regard to seniority and with regard to relative power in the country.* (Malcolm Wallop, 88th Congress, January 21, 1963)

*Such an amendment is a recipe for further reducing the power of the legislature relative to the "permanent government," the executive bureaucracy. It would prune deadwood, but also would prevent great legislative careers on the scale of Henry Clay's, Sam Rayburn's, and Robert Taft's—the sort of careers that give continuity, cohesion, and energy to the legislature. Besides, a "fresh face" is by another name a "rookie," with a lot to learn in a town where there is a lot to know.* (George F. Will, "Politics of Endurance," Washington Post, October 30, 1977)

*Skilled and experienced statesmen providing leadership in both Houses of the Congress are now more vital than ever to check executive power and bureaucratic excess. This proposed amendment would, in practice, weaken the capability of Congress to perform its historic role of restraining runaway executive power.* (Dr. Herbert Garfinkel, Testimony, March 14, 1978)

*. . . By shortening terms I feel that the legislative accountability will be enhanced and the forces which nurture it will be strengthened. This may be another way of saying that I have come to prefer democracy over efficiency . . .*

*Two thousand years ago, Plato rejected democracy because he believed the decisions of government should not be made by amateurs. He said we needed philosopher-kings to guide us—divinely anointed experts who clearly saw truth. I reject that view because in the realm of politics there is no truth as such. The best we can do is to seek modes of compromise and accomodation so we can live together peacefully. The legislature is the bar of the people—the forum in which we continue the great experiment in self-government. This is not an exercise that requires any special expertise; it requires commitment to the value of democracy.* (Sen. Dennis DeConcini, Testimony, March 14, 1978)

*. . . It really is an infringement on individual liberties, both the liberties of voters and officeholders. Moreover it is essentially anti-democratic. It just does not trust the electorate to decide for itself whether an individual should be returned to office or not. In fact, it substitutes an arbitrary rule for the collective judgment of citizens in this country.* (Thomas Mann, Testimony, March 1978)

## CONGRESSIONAL TENURE—
## A BRIEF LEGISLATIVE HISTORY

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| 1789 | The first congressional tenure reforms proposed rotation in office provisions and annual elections. |
| 1808 | Senator Hillhouse called for one-year House terms beginning in 1813. |
| 1869-90 | The trend shifted toward lengthening House terms to three, four, or six years, generally with the idea that this would eliminate the need to run for re-election. |
| 1890-1913 | While there were more proposals to lengthen House terms, Senate reforms attracted more attention. Proposals to lengthen Senate terms to eight years failed; the 17th amendment, mandating direct election of the Senate, was ratified in 1913. |
| 1946 | Legislative Reorganization Act passed. |
| 1951 | Harry Truman made a proposal for a four-year House term that was to be repeated by Eisenhower, Johnson, and Nixon. He also called for a twelve-year limit on congressional service. |
| 1966 | Lyndon Johnson's Special Message to the Congress led to hearings but no action. |
| 1972-78 | Interest in term limitation gradually surpassed that in lengthening terms and there have consistently been more amendments proposed to limit congressional terms, including twenty-two resolutions in 1977-78 alone. |
| 1981 | Gallup polls showed 61% of the general public in favor of limiting Senators' terms and 59% for limiting Representatives' terms. Both were up a full 10% from surveys a decade earlier. 51% of the general public responded favorably to the four-year House term, but that figure, interestingly, was down 10% from 1966. |

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